

**REMARKS/ARGUMENTS**

This Amendment is being filed in response to the Office Action dated December 10, 2008. Reconsideration and allowance of the application in view of the amendments made above and the remarks to follow are respectfully requested.

Claims 2-10 and 12-14 are currently pending in the Application.

Claims 2-4, 6-10 and 12-14 are rejected under 35 U.S.C. §103(a) as allegedly obvious over U.S. Patent No. 6,069,853 to Novotny ("Novotny") in view of U.S. Patent No. 5,311,500 to Higuchi ("Higuchi"). Claim 5 is rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Novotny in view of Higuchi in further view of U.S. Patent No. 6,058,094 to Davis ("Davis"). It is respectfully submitted that claims 2-10 and 12-14 are allowable over Novotny in view of Higuchi alone, and in view of Davis for at least the following reasons.

It is undisputed that Novotny (emphasis added) "fails to teach explicitly about the recording stack having a first optical surface (6) most remote from the substrate (8); and having a second optical surface (7) closest to the recording stack (9)... in that at least one of the first optical surface (6) and the second optical surface (7) is provided with a transparent hydrophobic layer (10) that has a refractive index  $n$  and has a thickness smaller than  $0.5\lambda n$ ." (See, Office Action, page 4.) Higuchi is cited to supply that which is missing from Novotny. However, it is respectfully submitted that reliance on Higuchi is misplaced.

As clearly understood by the Office Action (see, Office Action, page 2, Response to Arguments section), in Higuchi the moisture barrier is deposited on the substrate and dielectric layer.

It is respectfully submitted that the system of claim 12 is not anticipated or made obvious by the teachings of Novotny in view of Higuchi. For example, Novotny in view of Higuchi does not

disclose or suggest, a system that amongst other patentable elements, comprises (illustrative emphasis added) "an optical head, with an objective arranged on a recording stack side of the optical data storage medium and having a second optical surface closest to the first recording stack, from which objective the focused radiation beam emanates during recording, wherein at least one of the first recording stack has deposited a transparent hydrophobic layer on a surface of the first recording stack or the second optical surface has deposited a transparent hydrophobic layer on a surface of the second optical surface remote from the focused radiation beam, wherein the transparent hydrophobic layer extends substantially in a direction of an optical surface on which the transparent hydrophobic layer is deposited" as recited in claim 12.

It is further respectfully submitted that the medium of claim 8 is not anticipated or made obvious by the teachings of Novotny in view of Higuchi. For example, Novotny in view of Higuchi does not disclose or suggest, a medium that amongst other patentable elements, comprises (illustrative emphasis added) " having a recording stack, formed on a substrate, said recording stack suitable for recording by means of a focused radiation beam with a wavelength  $\lambda$  in air, the recording stack having a first optical surface most remote from the substrate having deposited thereon a transparent hydrophobic layer that has a refractive index  $n$  and has a thickness smaller than  $0.5 \lambda/n$ , wherein the transparent hydrophobic layer is deposited on a surface of the recording stack and extends substantially in a direction of the recording stack" as recited in claim 8 and as substantially recited in claim 14.

Davis is introduced for allegedly showing elements of the dependent claims and as such, does nothing to cure the deficiencies in Novotny in view of Higuchi.

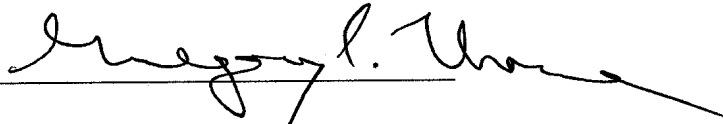
Based on the foregoing, the Applicants respectfully submit that independent claims 8, 12 and

14 are patentable over Novotny in view of Higuchi and notice to this effect is earnestly solicited. Claims 2-10 and 13 depend from claim 12 and accordingly are allowable for at least this reason as well as for the separately patentable elements contained in each of the claims. Accordingly, separate consideration of each of the dependent claims is respectfully requested.

In addition, Applicants deny any statement, position or averment of the Examiner that is not specifically addressed by the foregoing argument and response. Any rejections and/or points of argument not addressed would appear to be moot in view of the presented remarks. However, the Applicants reserve the right to submit further arguments in support of the above stated position, should that become necessary. No arguments are waived and none of the Examiner's statements are conceded.

Applicants have made a diligent and sincere effort to place this application in condition for immediate allowance and notice to this effect is earnestly solicited.

Respectfully submitted,

By 

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March 10, 2009

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